JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.1087 of 2013
Chairman, Federal Board of Revenue
Versus
Muhammad Imtiaz and others

Date of Hearing:	14.09.2020 and 01.10.2020.
Appellant by:	Mr. M.D. Shahzad Feroz, Advocate.
Respondents by:	M/s Muhammad Umair Baloch and Saif-ur-Rehman, Advocates for the private respondents. Ch. Fayyaz Hussain Dhariwal, learned Assistant Attorney General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellant, Chairman, Federal Board of Revenue, impugns the order dated 20.02.2013 passed by the learned Judge-in-Chambers, whereby writ petition No.516/2013 filed by the private respondents was allowed with the direction to *inter alia* the appellant to regularize the services of the private respondents whose services had been recommended to be regularized by the Cabinet Sub-Committee.

2. In the said order dated 20.02.2013, reference was made to another order dated 20.02.2013, whereby writ petition No.4325/2012 and connected petitions were allowed with the direction to the respondents in the said petitions to regularize the services of the petitioners in the said petitions.

3. The appellant preferred civil petition No.567/2013 before the Hon'ble Supreme Court against this Court's order dated 20.02.2013, whereby writ petition No.516/2013 was allowed. Vide order dated 04.07.2013 passed by the Hon'ble Supreme Court, the said petition was dismissed as incompetent. In the said order dated 04.07.2013, it was observed that an intra Court appeal was competent against the order dated 20.02.2013 passed by this Court.

4. On 16.07.2013, the appellant filed the instant intra Court appeal. Along with this appeal, the appellant also filed an application for condonation of delay. Vide order dated 27.11.2013, this Court condoned the delay and the appeal was taken up for hearing.

5. All the private respondents are children of deceased employees of the Federal Board of Revenue (**"F.B.R."**). They were given employment in F.B.R. for two years on contract basis under the *"Assistance Package for Families of Government Employees who die in Service"* (**"Assistance Package"**). The appointment letters dated 23.04.2009 and 26.01.2009 (annexed at pages 20 and 21 of this appeal) clearly provide that the appointment of respondents No.1 (Muhammad Imtiaz) and respondent No.2 (Kashif Rizvi) was for a period of two years.

6. On 09.09.2016, the Establishment Division issued an office memorandum, whereby the Assistance Package was revised. The revision was to the effect that employment against posts in BPS-01 to BPS-15 would be on contract basis for five years which would be extendable till the age of superannuation or regularization as the case may be.

7. The names of the private respondents had admittedly been forwarded by F.B.R. to the Cabinet Sub-Committee on the regularization of contract employees. It is also an admitted position that the Cabinet Sub-Committee had recommended that the services of all the private respondents be regularized. F.B.R.'s letter dated 20.03.2013 shows that the competent authority had granted approval for the regularization of all those contract employees who were appointed on contract basis under the Assistance Package and whose services had been recommended to be regularized by the Cabinet Sub-Committee. The said letter also shows that such regularization would be provisional and without prejudice to the order of the Hon'ble Supreme Court in the civil petition which was being filed by F.B.R. against this Court's order dated 20.02.2013 passed in writ petition No.516/2013. As mentioned above, civil petition No.567/2013 against this Court's order dated 20.02.2013 was dismissed by the Hon'ble Supreme Court as incompetent.

8. The private respondents have been serving as regular employees of F.B.R. ever since 20.03.2013.

9. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that the private respondents had not participated in any competitive process before being appointed in F.B.R. on contract basis for a period of two years;

that the services of such private respondents could not have been regularized; that F.B.R. should not have sent the names of the private respondents for the regularization of their services; that F.B.R.'s letter dated 20.03.2013, whereby the services of the private respondents were regularized clearly provides that such regularization was provisional in nature and subject to the outcome of the civil petition filed before the Hon'ble Supreme Court; that even though the civil petition had been dismissed as incompetent by the Hon'ble Supreme Court, this Court has the jurisdiction to declare that the private respondents did not have any legal right for their services to be regularized; that writ petition No.516/2013 was allowed by the learned Judge-in-Chambers without hearing F.B.R.; and that since F.B.R.'s rights had been prejudiced without having been heard, it is imperative for the impugned order dated 20.02.2013 to be set-aside and the matter be remanded to the learned Single Bench for a decision afresh.

10. On the other hand, learned counsel for the private respondents submitted that admittedly, the private respondents had been employed on contract basis for two years without going through any competitive process; that F.B.R. had forwarded the private respondents' names to the Cabinet Sub-Committee for the regularization of their services; that F.B.R. does not dispute the fact that the Cabinet Sub-Committee had recommended the services of the private respondents to be regularized; that the private respondents filed writ petition No.516/2013 because F.B.R. was not regularizing the services of the private respondents in accordance with the recommendations of the Cabinet Sub-Committee; that vide order dated 20.02.2013, F.B.R. was directed to regularize the services of only those employees who had been recommended to be regularized by the Cabinet Sub-Committee; that upon the dismissal of the civil petition against the said order dated 20.02.2013, the said order dated 20.02.2013 attained finality; that the private respondents have been working as regular employees of F.B.R. since 20.03.2013; and that the regularization of the private respondents' services is also in conformity with the law laid down by the Division Bench of this Court in the case of Imran Ahmed Vs.

Federation of Pakistan (2019 PLC (C.S.) Note 19). Learned counsel for the private respondents prayed for the appeal to be dismissed.

11. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

12. The facts leading to the filing of the instant intra Court appeal have been set out in sufficient detail in paragraphs 2 to 8 above and need not be recapitulated.

13. There is no denying the fact that the private respondents had been appointed on contract basis for a period of two years without any competitive process. Their appointments were pursuant to the terms of the Assistance Package. It is also an admitted position that F.B.R. had sent the private respondents' names to the Cabinet Sub-Committee to consider them for the regularization of their services. After the Cabinet Sub-Committee recommended that the services of the private respondents be regularized, the private respondents filed a writ petition before this Court seeking a direction for the regularization of their services. After the said writ petition was allowed by this Court, F.B.R., vide letter dated 20.03.2013, regularized the services of the private respondents on provisional basis. The reason why the regularization was done on provisional basis was because F.B.R. wanted to assail the said order dated 20.02.2013 passed by this Court before the Hon'ble Supreme Court. Vide order dated 04.07.2013, the Hon'ble Supreme Court dismissed F.B.R.'s civil petition No.567/2013 as incompetent.

14. The matter regarding the regularization of contract employees appointed in any Ministry or Division of the Federal Government is to be dealt with in accordance with the law laid down by this Court in the case of Imran Ahmed Vs. Federation of Pakistan *(supra)*. The said judgment does not deal with the regularization of the services of contract employees who had been appointed pursuant to the Assistance Package. Admittedly, none of the private respondents had been appointed through any competitive process prior to their appointment on contract basis or the provisional regularization of their services.

15. In Paragraph 123(viii) and (ix) of the judgment, in the case of Imran Ahmed Vs. Federation of Pakistan *(supra)*, this Court gave the following directions:

> *"viii. All employees, who have been regularized by the Government of Pakistan/competent authority through Cabinet Committee, who have not been given joining due to the restriction imposed by the Government and they are only waiting for their posting orders, the concerned Ministries and Divisions are directed to issue their posting orders within a period of 90 days subject to fulfillment of other codal formalities, however, their appointments will be considered permanent from the issuance of notification/joining orders.*
> *ix. Employees who are already working in different Ministries, Divisions and others whose their services have been regularized; they should not be disturbed as their cases fall within the ambit of past and closed transaction subject to conditions that they were appointed in accordance with law in a transparent manner."*

16. The term *"transparent manner"* adopted in paragraph 123(ix) of the said judgment implies a competitive process (i.e. advertisement, test and interview). The private respondents have admittedly not been appointed through such process before their services had been provisionally regularized by F.B.R. vide letter dated 20.03.2013. However, on 09.09.2016, the Establishment Division issued an office memorandum, whereby the Assistance Package was revised. The revision was to the effect that employment against posts in BPS-01 to BPS-15 would be on contract basis for five years which would be extendable till the age of superannuation or regularization as the case may be. In view of the said office memorandum, the services of the contract employees who had been appointed pursuant to the Assistance Package could have been regularized. Since the Cabinet Sub-Committee had, indeed, recommended that the services of the private respondents be regularized, we do not find any plausible reason to interfere with the impugned order dated 20.02.2013. Consequently, the instant appeal is dismissed with no order as to costs.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**

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